

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

LARRY A. PETREE,

Plaintiff,

v.

THE CINCINNATI, NEW ORLEANS
AND TEXAS PACIFIC RAILWAY
COMPANY, a corporation; NORFOLK
SOUTHERN RAILWAY COMPANY,
a corporation; THOMAS GRAHAM,
an individual; MASUR TRUCKING,
INC., a corporation,

Defendants.

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CASE NO. **1:07 CV 682**

SPIEGEL, J.

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DISTRICT
OF OHIO

COMPLAINT

I. PARTIES AND JURISDICTION

1. The Plaintiff, Larry A. Petree, is an individual resident and citizen of the State of Ohio.

2. The Defendant, Thomas Graham, is an individual citizen and resident of Morrow, Ohio.

3. The Defendant, Masur Trucking, Inc., is a Ohio corporation whose principal place of business is in Cincinnati, Ohio.

4. The Defendant, The Cincinnati, New Orleans and Texas Pacific Railway Company [hereinafter referred to as CNO&TP], is an Ohio corporation whose principal place of business is in Cincinnati, Ohio. The Defendant, CNO&TP, is a common carrier by railroad engaged in the business of operating a railroad in interstate commerce for hire for the purpose of carrying freight.

5. The Defendant, Norfolk Southern Railway Company, is a Virginia corporation whose principal place of business is Richmond, Virginia.

6. The Defendant, Norfolk Southern Railway Company is a common carrier by railroad engaged in the business of operating a railroad in interstate commerce for hire for the purpose of carrying freight in interstate commerce. The Defendant, Norfolk Southern Railway Company conducts a significant portion of its railroad operations in the State of Ohio.

7. The Plaintiff, at all times referred to herein, was an employee of the Defendants, CNO&TP and Norfolk Southern Railway Company, and was acting within the line and scope of his employment for said Defendants. The Plaintiff's duties of employment for the Defendants were in furtherance of interstate commerce or directly or closely affected interstate commerce.

8. The Plaintiff's claims against the CNO&TP and Norfolk Southern Railway Company are brought pursuant to the provisions of the Federal Employers' Liability Act, 45 U.S.C., §51, *et seq.* This Court has federal question jurisdiction pursuant to 28 U.S.C. §1331, in that this is an action arising under the laws of the United States.

9. This Court has supplemental jurisdiction over the Plaintiff's claims against Defendants Thomas Graham and Masur Trucking, Inc., pursuant to 28 U.S.C. § 1337 in that the Plaintiff's claims against these defendants are so related to the Plaintiff's claims against the CNO&TP and Norfolk Southern Railway Company that they form part of the same case or controversy under Article III of the United States Constitution.

II. FACTS

10. On August 24, 2005, the Plaintiff, Larry A. Petree was serving as a conductor

on a train being operated by the CNO&TP and Norfolk Southern Railway Company in Sharonville, Ohio. On that date, the Plaintiff's train was attempting to cross Mosteller Road on a railroad grade crossing. This maneuver was very unsafe given the road and traffic condition, and subjected Mr. Petree and his crew to significant risk of personal injury.

11. As Mr. Petree's train was attempting to go across the grade crossing, the Defendant, Thomas Graham, acting within the line and scope of his employment for the Defendant, Masur Trucking, Inc., carelessly and recklessly maneuvered his truck around other stopped traffic and drove his truck in such a manner as to cause it to collide with the locomotive engine on which Mr. Petree was riding.

12. At the time the Defendant's truck collided with Mr. Petree's train, he was stationed on the front platform of the locomotive engine. The impact caused Mr. Petree to be thrown back against the locomotive engine striking his shoulder and neck. As a result of this collision, Mr. Petree has suffered severe and permanent injuries to his shoulder and cervical spine.

III. FIRST CAUSE OF ACTION
(CNO&TP AND NORFOLK SOUTHERN RAILWAY COMPANY)

13. The Plaintiff avers that all of his above mentioned injuries and damages were proximately caused, in whole or in part, by the negligence of the Defendants, CNO&TP and Norfolk Southern Railway Company, their agents, servants, or employees while acting within the line and scope of their employment for said defendants or by reason of a defect or insufficiency due to its negligence in their work practices, operating practices, and safety practices at the time and place where the Plaintiff suffered his above mentioned injuries and damages.

14. The Plaintiff further avers that all of his injuries and damages were caused, in whole or in part, by the negligent failure of the Defendants, CNO&TP and Norfolk Southern Railway Company, to use reasonable care to provide to the Plaintiff a reasonably safe place for the Plaintiff to perform his work and labor for said defendants.

IV. SECOND CAUSE OF ACTION
(THOMAS GRAHAM)

15. All of the Plaintiff's injuries were proximately caused by the negligence and/or wantonness of the Defendant, Thomas Graham.

16. The Plaintiff avers that the Defendant Thomas Graham's negligence includes, but it is not limited to, the following specific acts of negligence:

- (a) He carelessly and recklessly drove his truck into the locomotive engine;
- (b) He negligently and carelessly failed to keep a proper lookout for the locomotive engine on the railroad grade crossing;
- (c) He negligently and carelessly tried to beat the locomotive engine and train across the crossing;
- (d) He was otherwise negligent.

V. THIRD CAUSE OF ACTION
(MASUR TRUCKING, INC.)

17. The Plaintiff avers that at all times referred to herein Defendant, Thomas Graham, was an employee of the Defendant, Masur Trucking, Inc., and was acting within the line and scope of his employment for the Masur Trucking, Inc.

18. The Defendant, Masur Trucking, Inc., is vicariously liable for the negligence of its agent, servant, or employee, Thomas Graham.

19. The Plaintiff avers that all of his injuries were proximately caused by the

negligence of the Defendant, Masur Trucking, Inc.

20. The Plaintiff avers that the negligence of the Defendant, Masur Trucking, Inc., includes, but is not limited to the following specific acts of negligence:

- (a) They negligently trained, hired, or retained the Defendant, Thomas Graham, as an employee.

VI. DAMAGES

21. The Plaintiff avers that as a result of his injuries he has suffered and seeks to recover the following elements of damages:

- (1) Past and future lost wages and fringe benefits;
- (2) Past and future medical expenses;
- (3) Past and future physical pain and mental anguish;
- (4) Inability to carry out the usual and normal activities of life;
- (5) Permanent physical disability.

23. As damages, Plaintiff seeks to recover a sum to fully and fairly compensate him for his injuries. The Plaintiff's damages and the amount he seeks to recover are in excess of Five Hundred Thousand Dollars (\$500,000.00).

VII. JURY DEMAND

24. The Plaintiff demands trial by jury.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff brings this Complaint against the Defendants and requests this Honorable Court to enter a judgment in excess of Five Hundred Thousand Dollars (\$500,000.00) and requests all other relief, both general and special, as mandated by the premises, and as justice may require. Your Plaintiff also demands a jury to try this case.

Lucinda C. Shirooni

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